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CITY OF RICHMOND *v.* CHESAPEAKE & POTOMAC
TELEPHONE CO. OF VIRGINIA.

Sept. 16, 1920.

[105 S. E. 127.]

1. Telegraphs and Telephones (§ 33 (1)*)—State May Allow Municipality to Establish by Contract Rates to Be Charged by Public Utilities.—A state can authorize a municipal corporation to establish by an inviolable contract for rates to be charged by a telephone company or other public service corporation for a definite term, not unreasonable in point of time, and the effect of such contract is to suspend during its term the governmental power of regulating rates.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 228.]

2. Municipal Corporations (§ 619*)—Power of Municipality to Fix by Inviolable Contract Rates of Public Utilities Must Clearly Appear.—As an inviolable contract whereby a municipal corporation fixed rates to be charged by public utilities extinguishes for the time being the governmental power to regulate rates, the contract and the authority to make it must clearly and unmistakably appear, and all doubts will be resolved in favor of the continuance of power of the state.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 227, 228.]

3. Telegraphs and Telephones (§ 33 (1)*)—Rates May Be Regulated by Commission.—Where express power to fix telephone rates is not conferred upon municipality, the matter is subject to general laws and a constitutionally created commission may be authorized by municipal franchises.

4. Constitutional Law (§ 135*)—State May Authorize Public Utility to Increase Rates beyond Franchise without Impairing the Obligation of Contract.—The state may direct a public utility to increase its rates above those fixed by franchise, if necessary, and, so far as the municipality is concerned, there is no constitutional objection on the ground of the impairment of contract obligation.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 166.]

5. Municipal Corporations (§ 619*)—Power to Prohibit Use of Streets Is Insufficient to Confer Power to Fix Rates.—Though a city has the statutory or constitutional right to prohibit the use of its streets by public service corporations, this alone is insufficient to confer express power to regulate rates by inviolable contract.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 167.]

6. Telegraphs and Telephones (§ 33 (1)*)—Rates Fixed by City Franchise Subject to Increase by State Corporation Commission.—Notwithstanding provisions of Const. 1902, §§ 124, 125, forbidding

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

use of streets of municipalities by public utilities without their consent, and providing that franchises shall make adequate provision to secure sufficient public service at reasonable rates, a franchise contract, entered into between city and telephone company in 1901, which fixed the rates to be charged, is not inviolable by virtue of the provisions of section 156 (b), declaring that nothing shall impair the right heretofore or hereafter conferred by law upon any municipality to fix and prescribe rates, for the franchise became effective before enactment of the Constitution, and there was no other authority to the city to fix inviolable rates; hence rates may be fixed by the State Corporation Commission created by section 156 (b) notwithstanding the franchise.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 230.]

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

7. Public Service Commissions (§ 7*)—Legislature May Grant Reserve Power; There Being No Constitutional Inhibition.—As Const. 1902, § 156 (b), creating the State Corporation Commission and giving it authority over rates, nowhere restricted the power of the Legislature, but by section 156 (c) authorized the Legislature to confer additional powers, and by sections 159 and 164 reserved all the police power of the state, and declared that the right of the commonwealth to prescribe the duties of public service corporations should never be surrendered, the Legislature, which has unlimited powers over rate regulation unless restricted, may grant additional power to fix rates to the commission so long as such powers do not infringe the proviso of section 156 (b) declaring that nothing shall impair the right heretofore or hereafter conferred on municipalities to prescribe regulations of charges, which merely protected existing rights or those thereafter created.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 222.]

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

8. Statutes (§ 158*)—Implied Repeals Are Not Favored.—Implied repeals are not favored, and an earlier act will be deemed repealed by a later act only in so far as the later is inconsistent with the earlier.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 780.]

9. Telegraphs (§ 33 (1*))—State Corporation Commission Has Authority to Fix Rates, Notwithstanding They May Have Been Fixed by Municipal Franchise.—Under Code 1919, §§ 4052, 4054, which supplanted Act March 13, 1914 (Laws 1914, c. 95), and Act March 27, 1914 (Laws 1914, c. 340), relating to State Corporation Commission, such commission has jurisdiction to prescribe and enforce just and reasonable telephone rates, charges, and regulations, notwithstanding they may have been fixed by the municipal franchise under which the telephone company is operating.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 220.]

Appeal from State Corporation Commission.

Petition by the Chesapeake & Potomac Telephone Company of Virginia for an increase in rates, opposed by the City of Richmond. From an order of the State Corporation Commission allowing petitioner pending investigation to charge increased rates fixed by the federal government during the time it had taken over the property of petitioner as a war-time measure, the City of Richmond appeals. Affirmed.

Geo. Wayne Anderson, of Richmond, for appellant.

John S. Eggleston, of Richmond, for appellee.

KIDD v. DE WITT.

Nov. 18, 1920.

[105 S. E. 124.]

1. Master and Servant (§ 330 (3)*)—Evidence Held to Show that Automobile Was Not Loaned to Servant.—In an action against an automobile owner for injuries from negligent driving by his chauffeur, evidence held to show that defendant did not loan his car to his cook, but authorized the chauffeur to carry the cook to visit her relatives and bring her back.

2. Master and Servant (§ 302 (1)*)—Automobile Owner Responsible for Negligence of Chauffeur Acting within Scope of Employment.—One seeking recovery against an automobile owner for injury caused by negligence of the chauffeur must not only establish the relationship of master and servant between the owner and the chauffeur, but, further, that the chauffeur at the time of the accident was about his master's business, and was acting within the scope of his employment.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 727, 728.]

3. Master and Servant (§ 302 (6)*)—Automobile Owner Not Liable for Negligence of Chauffeur, Driving for His Own Pleasure.—Where a chauffeur, under order of his master to transport another servant to a certain place on a visit and bring her back, reached the place at 3 o'clock and called for her at 5 o'clock, the master was not liable for injuries caused by negligence of the chauffeur in the interim, while he was joy-riding with a friend, and was neither going for nor returning with his passenger.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 729.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.